

No. 4799-4Lab-76/21374.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the Management of M/S Dalmia Dadri Cement Ltd., Charkhi Dadri.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Complaint No. 3 of 1975 under section 23-A of the Industrial Disputes Act, 1947.

between

SHRI NARINDER SINGH JAIN, WORKMAN AND THE MANAGEMENT OF M/S DALMIA
DADRI CEMENT LTD., CHARKHI DADRI.
AWARD

This is a complaint brought by one Shri Narinder Singh Jain an Electrician in the employment of the respondent M/s Dalmia Dadri Cement Ltd., Charkhi Dadri under section 33-A of the Industrial Disputes Act hereinafter referred to as the Act on the ground that the management discharged him from service illegally and unjustifiably without holding any domestic enquiry,—vide their letter, dated 13th December, 1974 without obtaining any permission or approval from the Industrial Tribunal as required,—vide section 33 of the Act during pendency of reference No. 100 and 35 both of 1972 wherein he was a concerned workman. He denied the allegations made against him by the management in their order, dated 13th December, 1974 while stating that he had made a representation, dated 4th December, 1974 to the management against the order of his discharge from service and that it was rejected and that he thereafter again made a representation in writing, dated 18th December, 1974 which was also rejected. He finally averred that the action of the management in finally discharging him from service was illegal and contrary to the certified standing orders of the company in as much as he could not legally be discharged from service without the management holding an enquiry into the misconduct alleged against him.

The management,—vide written statement filed by them pleaded that the complaint was liable to be rejected for want of mention of particular part or clause of section 33 alleged to have been contravened and that the complainant be directed to furnish better particulars of his case. On merits the management denied the allegations made by the workman and gave out that on usual search at the gate on 2nd December, 1974 the watchman required from the applicant 2½ meters fuse wire belonging to the factory which he had been clandestinely carrying in his pocket and that on being questioned he gave his statement admitting his guilt and that they consequently lost all trust and confidence in him and terminating his services in simplicitor, bona fide, instead of taking a strict disciplinary action after holding an enquiry.

The petitioner controverted the plea of the management and reiterated the allegations made in the complaint,—vide rejoinder filed by him while giving out that the complaint made by him was correct and regular in all respects. The following issues were thus framed on pleas of the parties,—vide order, dated 20th March, 1975 :—

- (1) Whether the management has controverted the provision of section 33 of the Industrial Disputes Act, 1947, as alleged in the complaint ? (on complainant)
- (2) If issue No. 1 is proved whether the termination of services of Shri Narinder Singh complainant was justified and in order ? If not, what relief is he entitled to ? (on management)

I have heard Shri S. N. Bhandari, Advocate, authorised representative for the management and Shri Bhim Singh appearing for the workman with reference to the evidence led by the parties and carefully seen the record. I decide the issues as under :—

Issue No. 1

It is conceded on both sides that the complaint would be maintainable only if the workman is able to establish that the order of his discharge from service in simplicitor ostensibly made as a result of loss of confidence in him by the management was actually colourable and mala fide and was made in order to victimise the workman made and in order to avoid an enquiry. It was further conceded by the parties that the Tribunal had power and indeed a duty to x-ray the order in dispute and discover its true nature. It would be appropriate in this connection to state in extenso the observation of their Lordship of the Supreme Court made in 1976-I-LLJ-262 between L. Michael and another V. M/s Johnson Pumps India Ltd; as under :—

“Held, the law is simply this ; The Tribunal has power and, indeed, the duty to x-ray the order and discover its true nature, if the object and effect, if the attendant circumstances and the ulterior purpose is to dismiss the employee because he is an evil to be eliminated. But if the management to cover up its inability to establish by an enquiry, illegitimately but ingeniously passes an innocent-looking order of termination simpliciter, such action is bad and is liable to be

set aside. Loss of confidence is no new armour for the management; otherwise, security of tenure, ensured by the new industrial jurisprudence and authenticated by a catena of cases of this Court can be subverted by this neo-formula. Loss of confidence in the law will be the consequence of the loss of confidence doctrine.

Loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and motivations. The Court is concerned with that latter and not the former, although circumstances may exist which justify a genuine exercise of the power of simple termination. In a reasonable case of a confidential or a responsible post being misused or a sensitive or a strategic position being abused, it may be a risk to keep the employee, once suspicion has started and a disciplinary enquiry cannot be forced on the matter. There is a termination simpliciter may be bona fide, not colourable and loss of confidence may be evidentiary of good faith of the employer.

An employer, who believes or suspects that his employee, particularly one holding a position of confidence, has betrayed that confidence can, if the conditions and terms of his employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion should not be a mere whim of fancy. It would be bona fide or reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively, in good faith, which means honestly, with due care and prudence. If the exercise of such power is challenged on the ground of being colourable, or mala fide or an act of victimisation or unfair labour practice, the employer must disclose to the Court the grounds of his impugned action so that the same may be tested judicially."

In view of the law on the subject stated above I am now called upon to determine as to whether the order made of discharge of the workman from service in simpliciter in the instant case is bona fide or colourable. The management in order to prove their case examined Shri Udhey Singh, Security Inspector M.W.I and the workman examined one Shri Prem a helper in the Electric Department besides making his own statement. Sarvshri S. D. Vashist Factory Manager and V. P. Bhatia Electrical Engineer employed with the management were examined as Court witnesses, in pursuance of an order, dated 10th June, 1975 of Shri O. P. Sharma my learned predecessor the then Presiding Officer of the Industrial Tribunal. This is all the evidence on record in respect of the charge which led to the impugned order.

Shri Udhey Singh proved the report Ex. M-1 forwarding to the Factory Manager a report dated 2nd December, 1974 received by him from Shri Malkhan Singh Watchman that the workman was found during his personal search on that day at about 6 P.M. in possession of $2\frac{1}{2}$ or 3 metres of fuse wire. He deposed that he handed over both these documents to Shri S. K. Sharma, Joint Secretary and that the letter Ex. M-3 was written by the workman Shri Narinder Singh Jain in his presence without any pressure being exercised on him. Letter Ex. M-3 addressed to the Factory Manager bears an admission of the workman that $2\frac{1}{2}$ metre fuse wire was found in his pocket during his personal search and that while going outside the factory he happened to take it with him by mistake and that he would take care in future not to take any property of the management.

Shri Narinder Singh Jain, appearing as his own witness explained that allegations made against him in respect of an attempt on his part to commit theft of fuse wire was obviously false and that on 2nd December, 1974 at about 5.45 P.M. he was going to instal fuse wire in the meter of double room quarters of the colony, on being asked to do so by Niranjan Lal Wireman as per instructions of the Electrical Engineer. He added that he took out the articles including the fuse wire of the length of $2\frac{1}{2}$ metres from his pocket on being asked to do so by Shri Malkhan Singh, Watchman and told him that he was going to double room quarters for installing a fuse wire in a meter in obedience of the order of the Electrical Engineer. He gave out that Malkhan Singh left the place and called the Head Watchman who made him to sit in the office of the Security Officer and that Shri Udhey Singh, Head Watchman then took him to the office of the Factory Manager where from he was taken to the residence of the Factory Manager by the Head Watchman and the Factory Manager coerced here to pass on a writing, Ex. M-3 under a threat, that if he did not do so he would be handed over to the police and dismissed from service. He continued to say that he made a complaint, Ex. W.W. 4/A on 4th December, 1974 to the Joint Secretary of the management who did not take any action and the management illegally terminated his services. He further explained that an electrician or a wireman was allowed to take out of the factory without permission, a fuse wire besides other necessary implements, even if he was leaving the factory without being on duty.

Shri S.D. Vashist, Factory Manager, examined as a Court Witness denied the story put forth by the Workman. Shri S.D. Vashist admitted in writing by way of an affidavit in reply to the interrogatories served on the management that the factory was established about 35 years back and that it was not possible for him to trace out the old record to find out the written orders or instructions issued from time to time relating to the issuing of the gate passes for taking articles issued from the Store Department or other departments outside the factory. He could file only two gate pass permitting carriage of a fuse wire outside the factory.

Shri Narinder Singh Jain, the workman concerned was admittedly an Electrician on 2nd December, 1974 when he was admittedly found in possession of $2\frac{1}{2}$ metres of fuse wire which according to him cost only 10 paise in the market. The only question requiring determination under the circumstances would be as to whether he was

taking the fuse wire outside the factory with an intention to commit theft or it was in its possession at that time in routine along with other implements required by an electrician in the day to day discharge of his duties or he was going to the double room quarters to install a fuse wire in a meter fixed there.

The sole reliance of the management to prove an attempt of theft on the part of the workman is on the letter Ex. M-3 admittedly in the hand writing of the workman giving out that the fuse wire had been retained by him in the pocket of his pant by mistake. The letter is addressed to the Factory Manager who denied having been present on 2nd December, 1974, in the premises of the Factory after 5.40 p.m. and stated to have come to know of the incident only on 3rd December, 1974, on his return from Delhi. The letter Ex. M-3 that according to the story put forth by the management was handed over to Shri Udhay Singh by the workman at the time of his search by Shri Malkhan Singh. Having given a careful thought to the whole matter the circumstance that the letter Ex. M-3 is addressed to the Factory Manager and not to the Security Inspector lends support to the plea of the workman that it was obtained from him by the Factory Manager under duress and was not handed over to Shri Udhay Singh by him voluntarily and I, therefore, rely on the statement of the workman for arriving at that conclusion in view of this important circumstance.

In view of the price of the fuse wire of the length of about 2½ metres as stated above, and the nature of the duties of an Electrician, his possession of the fuse wire even while leaving his duties, along with a Pan Tester, Screw Drivers, Plier, Black Tap and Test Lamp admittedly permissible, in his possession, according to the testimony of Shri B.P. Bhatia, C.W.-2, does not by itself lend to a presumption of theft. In absence of any other evidence to prove the intention of the workman to commit theft mere possession of the fuse wire of the length of 2½ metres did not establish even *prima facie* the case of the management.

Even assuming that the letter Ex. M-3 was passed on to Shri Udhay Singh, Security Inspector, by the workman voluntarily, it by no means constituted an admission of his guilt in respect of his intention to take it out of the factory in order to make use of it himself, in as much as what is found to be stated in the letter by the workman is that he happened to retain the fuse wire in his pocket by mistake. I am thus at a loss to understand as to how did the management come to the conclusion of his intention to commit theft of a fuse wire.

The management could cite only two instances of permission of the management to the employees of the Electric Department to take fuse wire outside the factory in order to substantiate their case that such a permission was always required under rules. It would be pertinent to note in this connection that no such rules or instructions could be produced by the management despite their being specifically asked to do so. The gate passes, Ex. WY and WZ relating to the permission of the management for taking fuse wire outside the factory were produced by Shri V.P. Bhatia, Electrical Engineer, CW-2 without being asked to do so, as he brought these passes anticipating a question from the workman in cross-examination in this connection. These gate passes are written in ink and not on printed forms and the possibility of these being fabricated cannot be ruled out. Shri Prem, Helper in the Electric Department to whom the gate pass, Ex. WY was alleged to have been given denied to have ever received it. The writing in ink on these gate passes are not legible to convey that these were issued in respect of the permission to the workman to take fuse wire outside the factory.

Considered from any angle there is not an iota of evidence on record in support of the plea of the management that the workman made an attempt to commit theft of fuse wire of the length of 2½ metres. I on the other hand fully rely on the statement of the workman that he was going to double room quarters for installing a fuse wire in a meter on being asked to do so by the authorities concerned at the relevant time of his personal search. Even otherwise in absence of any rules or instructions in writing, he in view of the nature of his duties as an Electrician shall be presumed to be entitled to always keep a fuse wire in his possession along with other implements and his possession of the same would not lead to a presumption of theft.

I am thus convinced on appraisal of the whole evidence on record that the impugned order, Ex. W-1 terminating the services of the workman in simpliciter is colourable made by the management in order to victimise the workman and to weed him out of their service, without holding an enquiry, in the garb of his discharge from service in simpliciter and constitutes a contravention of the provision of section 33 of the Act. I decide this issue in favour of the workman.

Issue No. 2. In view of my finding on issue No. 1 the order terminating the services of the workman is obviously unjustified and not in order and he is entitled to be reinstated with effect from 13th December, 1974, the date of the impugned order with continuity of his service and full back wages. I thus accept the complaint made by the workman with a direction that this award be sent to the Government for publication in the Government Gazette.

MOHAN LAL JAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 14th May, 1976.

No. 605. dated the 14th May, 1976

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 14th May, 1976

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 4319-4Lab-76/21376.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s The Bengal National Textile Mills, 14/5, Mathura Road, Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 94 of 1971

between

THE WORKMEN AND THE MANAGEMENT OF M/S THE BENGAL NATIONAL TEXTILE
MILLS, 14/5, MATHURA ROAD, FARIDABAD

AWARD

By order No. ID/ED, 558-B-71/31631, dated 26th October, 1971, the Governor of Haryana referred the following dispute between the management of M/s The Bengal National Textile Mills, 14/5, Mathura Road, Faridabad, and its workmen to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

- (1) Whether the workmen are entitled to the grant of dearness allowance linked with cost of living index ? If so, with what details ?
- (2) Whether the termination of services of the workmen (list attached) was justified and in order ? If not, to what relief are they entitled to ?
- (3) Whether the gratuity scheme should be introduced in the establishment ? If so, from which date and with what details ?

The parties put in their appearance in this Tribunal in response to the usual notices of reference sent to them and filed their pleadings giving rise to the issues framed,—*vide* order dated 8th May, 1972, as per terms of the disputes referred as stated above besides some legal issues, not now necessary to be reproduced in this award in view of the peculiar facts of the case.

Shri Darshan Singh, Secretary, Textile Mazdoor Union Regd., N.I.T. Faridabad, who raised the demand leading to this reference on behalf of the workmen, continued to put in his appearance in the case till 25th August, 1972, whereafter one Shri D.N. Gupta appeared for the workmen on 26th October, 1972, 16th November, 1972, and 16th January, 1973, without any letter of authority in his favour from the workmen. Shri Mohan Lal, General Secretary, Suti Mill Mazdoor Union, Faridabad, began appearing for the workmen with effect from 18th May, 1973 and continued to do so on various hearings till 23rd September, 1975.

Shri O.P. Sharma, my learned predecessor, the then Industrial Tribunal, Haryana, made an undated interim award in respect of dispute Nos. 1 and 3 on the basis of settlements M-1, M-2 and M-3 arrived at between the parties and admitted to be correct. *vide* statements dated 15th October, 1973, of Shri V.K. Jain, Personnel Officer of the management and Shri Mohan Lal, General Secretary, Suti Mill Mazdoor Union, Faridabad. It is thus obvious that only dispute No. 2 as referred to this Tribunal remained to be adjudicated upon.

It would be significant to note that even Shri Mohan Lal began absenting himself after 23rd September, 1975 and Shri R.N. Roy appeared for the 1st time on 18th December, 1975 only on behalf of the 7 workmen as enlisted in the letter of authority executed by them in his favour. The management took objection to the appearance of Shri R.N. Roy even for these 7 workmen and arguments were heard by me on this important question after recording the statement of Shri R.N. Roy that he had been elected as legal adviser and the member of the Executive Committee of Suti Mill Mazdoor Union, Faridabad, on 30th November, 1975 and that this union covers the present employees of the management even though it was different from the Textile Mazdoor Union.

Shri R.N. Roy relied upon an authority, 1959-II-LLJ-553 of the Supreme Court between Hotel Imperial, New Delhi and Chief Commissioner, Delhi and others holding that the reference made on the initiative of a particular union did not preclude the workmen from applying to the Tribunal for being made parties individually or

for their representation by any other union. The management on the other hand submitted another authority 1961-I-LLJ-504 between Ram Parshad Vishvkarma and Industrial Tribunal Patna wherein a view inconsistent to the observation of the Hon'ble Judges of the Supreme Court adopted in 1959-ILLJ-553 referred to above, was taken in the following terms :

"It is not unreasonable to think that S. 36 of the Industrial Disputes Act recognizes this position by providing that the workman who is a party to a dispute shall be entitled to be represented by the officer of a registered trade union of which he is a member, while it will be unwise and indeed impossible to try to lay down a general rule in the matter, the ordinary rule should be that such representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances which may permit the tribunal to permit other representatives of the workman concerned."

I, for the reasons stated therein, and having regard to the circumstances that the authority relied on by the management is later in point of time prefer to adopt the view of law taken therein. I, therefore, disallow Shri R.N. Roy to appear for the 7 workmen enlisted in the letter of authority executed in his favour. The result is that there is now no proper person representing the workmen enlisted in the list attached with the reference in relation to dispute No. 2 and in absence of their due representation, none of them is entitled to any relief as regards dispute No. 2.

I thus answer the reference while returning the award in terms of these findings.

Dated the 30th April, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

No. 550 dated 30th April, 1976

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated : 30th April, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

LIST OF THE TERMINATED WORKERS.

1. Bholu Nath son of Kanta Singh.
2. Bhim Singh son of Khilo Singh.
3. Hukam Singh son of Inder Ram.
4. Klamudin son of Abdul Gaffar.
5. Munir Ahmed son of Mohamed Ali.
6. Ram Narayan son of Shyam Lal.
7. Nanku son of Budhu Ram.
8. Panna Lal son of Baijnath.
9. Birbal Giri son of Chhotai Giri.
10. Ram Dular son of Ram Chand.
11. Lalit Parshad son of Ram Badal.
12. Ram Singh son of Bhim Singh.
13. Nur Muhamad son of Egbal Miya.
14. Manohar Lal son of Narayan Dass.
15. Hirday Swami son of Kulandra Swami.
16. Ghakhuri Ram son of Jala.
17. Ram Baran son of Shiv Parshad.
18. Gopi Pandit son of Gudai.
19. Ram Chander son of Dati Parshad.
20. Jai Dev Sharma son of Bihari Lal.
21. Shyam Lal son of Dhani Ram.
22. Bishambar Singh son of Ramnath Singh.
23. Sudhu son of Shuk Ram.
24. Jasbir Singh son of Girvar Singh.
25. Ram Saran son of Gian Chand.

ATTESTED

MOHAN LAL JAIN,

Presiding Officer,
Industrial Tribunal Haryana, Faridabad.